No. _____

SUPREME COURT, U.S.
FILED
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OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1995

PAUL J. SCHAPIRO,
Plaintiff/Petitioner

v.

SARITA R. SCHAPIRO

MONTGOMERY COUNTY COURT, ET AL
MONTGOMERY COUNTY COURT, DOMESTIC RELATIONS SECTION, DAVID GUTIN, HORACE A. DAVENPORT, HON. ROGER B. REYNOLDS, JR., BERNARD A. MOORE, HON. SAMUEL W. SALUS, II, HON. JOSEPH A. SMYTH, HON. ALBERT R. SUBERS, HON. RICHARD LOWE, HON. MATHEW SANTANGELO, SANDRA NEWMAN, HON., ROBERT KATZ, JEAN BISECKER, ASTOR WEISS KAPLAN & ROSENBLOOM, (FORMERLY ASTOR, WEISS AND NEWMAN), FAIGA RUBENSTEIN, LYNDA SMITH, SUPERIOR COURT OF PENNSYLVANIA, SUPREME COURT OF PENNSYLVANIA JUDICIAL CONDUCT BOARD, WILLIAM ARBUCKEL, III

Defendants/Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

NO. 848 E.D. ALLOCATUR DOCKET 1995 (BIFURCATION)
AND
NO. 756 E.D. ALLOCATUR DOCKET 1995 (RECUSAL)

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Montgomery County Court err in not letting Petitioner, proceed *pro se* with the recusal issue despite the fact that there were attorneys of record?

2. Did the Montgomery County Court have jurisdiction to preside over Petitioner's case and issue orders after the Petitioner filed a notice of Appeal on March 14, 1995?

3. Did the Montgomery County Court order of March 24, 1995 granting the Respondent's Petition for Bifurcation contravene the avowed policy of the Divorce Code to promote economic justice and equity between the parties?

4. Does the Civil Rights Act of 1871 as amended 42 U.S.C. Sec. 1983 provide Petitioner a remedy for due process violations occurring within domestic relations proceedings?

LIST OF PARTIES

The parties to the proceedings below were the Petitioner Paul J Schapiro and the Respondent, Sarita Schapiro.

The respondents before this Court are listed on the caption of the case.

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Defendants/Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

PETITION FOR WRIT CERTIORARI

The petitioner Paul J. Schapiro respectfully prays that a writ of certiorari issue to review the Orders of the Supreme Court of Pennsylvania, issued per curiam on May 8, and May 9, 1996.

OPINIONS BELOW

No opinions issued from the Supreme Court of Pennsylvania or the Superior Court of Pennsylvania in the cases herein. On May 16, 1995, the Montgomery County Court of Common Pleas, J Subers, presiding, issued an opinion rejecting Petitioner's claim relative to Recusal. On the same day (i e, May 16, 1995) Judge Subers issued an opinion rejecting Petitioner's claim relative of Bifurcation. Both opinions are cited in the Appendix at (Vol. VII, R. R. 3840-R.R. 3842) and included in the end of this Petition for Writ of Certiorari.

JURISDICTION

This Writ of Certiorari is applied for from the Order of the Supreme Court of Pennsylvania, May 9, 1996, denied (No. 756 ED. Allocatur Docket 1995) the Petition for Allowance of Appeal. . . . . . RR 3817.
Also attached at the end of this Petition for Writ of Certiorari and titled *Appendix.*

This Writ of Certiorari is applied for from the Order of the Supreme Court of Pennsylvania, May 8, 1996, denied (No. 848 ED Allocatur Docket 1995) the Petition for Allowance of Appeal . . . . . .RR 3818.

Also attached at the end of this Petition for Writ of Certiorari and titled *Appendix.*

The jurisdiction of this Court to review the judgement of the Supreme Court of Pennsylvania is invoked under 28 U.S. C. Sec. 1254 (1).

STATUTE INVOLVED

28 US.C. Sec. 1254. Courts of appeals;certiorari; appeal; certified questions.

(I) By writ of certiorari granted upon the petition of any civil or criminal case, before or after rendition of judgment or decree; . . .

STATEMENT OF THE CASE

On December 20, 1994 Plaintiff/Petitioner filed a Petition, *pro se*, in the Montgomery County court requesting that the Honorable Judge Albert J. Subers recuse himself from his case involving matters of Divorce, Custody, and Equitable Distribution. (App.Vol.. Vll, RR 3942-3945).

On January 27, 1995 when this matter was scheduled for a hearing, Judge Subers would not hear it because Petitioner's attorney was not present although Petitioner was willing to proceed without the assistance of Counsel. (App. Vol. VII, R.R. 3835b and 3836b).

On February 21, 1995, Judge Subers once again refused to hear Plaintiffs Petition to Recuse. (App. Vol. VII, R.R. 3836 and R.R. 3837).

Then on the morning of February 27, 1995, Plaintiff/Petitioner filed a Petition to appeal Judge Subers' Dismissal of His Own Recusal Hearing, the latter having never been heard on the merits of the Petition. (App. Vol. VII, R.R. 3946-3948).

At the hearing that same day (See Transcript in App. Vol. VII, R.R. 3930-3934), Judge Subers reminded Petitioner's legal counsel that he could not hear the latter's Petition for Modification of Support and Custody owing to the fact that Petitioner had earlier that morning filed an appeal in the Montgomery County Court. Subers claimed he lacked jurisdiction; Subers repeated his inability to act on jurisdictional grounds several times. Inexplicably, Subers refused to issue an Order that same day at Petitioner's request to allow Petitioner the right to appeal to the Superior Court of Pennsylvania.. (App. Vol. VII, R.R. 3931).

On March 9, 1995 Judge Subers entered an Order denying Plaintiff/Petitioner's **Petition to Appeal Judge Sabers' Dismissal of His Own Recusal Hearing**. Subers claimed in his March 9th Order that this dismissal was based on the fact that Petitioner, moving *pro se*, had never filed an Appeal of that petition. Then Subers re-labled the Petition a **Reconsideration** and dismissed the Motion for Reconsideration. (App. Vol. VII. R.R. 3837b). In actuality, no Order had issued prior to March 9, 1995 denying

Plaintiff/Petitioner's **Petition to Appeal Judge Subers' Dismissal of His Own Recusal Hearing**. Petitioner could not appeal without an Order.

On March 14, 1995 Petitioner entered a Notice of Appeal from the Order of March 9, 1995, issued by Judge Albert Subers. (App. Vol. VII, R.R. 3838).

Notwithstanding the Appeal of the Petitioner, Judge Subers moved ahead and, at a hearing on Respondent's Petition for Contempt and Bifurcation, held on March 24, 1995, Judge Subers granted the Motion for bifurcation. (App. Vol VII, 3839).

Pursuant to an Order of the Montgomery County Court dated March 20, 1995, Petitioner filed a Concise Statement of Matters Complained of on Appeal on April 3,1995 (App. Vol. VII, R R. 3927-3929).

On May 16, 1995, Judge Subers issued his OPINION in response to Petitioner's Appeal on March 14, 1995 from the Order of Judge Subers issued on March 9, 1995. (App. Vol. VII, R.R. 3840-3842).

REASONS FOR GRANTING THE WRIT

I. The Montgomery County Court erred in disallowing Petitioner to proceed with the merits of his recusal petition *pro se* even though there were attorney's of record.

Belated liberation is little enough compensation for Petitioner. Against the back drop of this case, justice required that Petitioner be heard with or without counsel. In the recusal hearings of January 27 and February 21, 1995 and what was supposed to have been a custody hearing on February 27, 1995, Petitioner stated throughout that Judge Subers had not treated him fairly and that Subers was not acknowledging his side of the story, that Petitioner was being ignored and that he was being made to suffer from fraudulently procured orders.

Where there is an irreconcilable disagreement between lawyer and client, if the interest of justice requires, the party may proceed *pro se*.

Legal Counsel initially did not want to recuse Judge Subers hoping to resolve the problem in a more diplomatic way.[1] Ultimately, counsel agreed to take this course only when he realized that Judge Subers' actions in this case was causing great injustice and irreparable harm to his client.

A lawyer's unwillingness to be involved in a recusal motion should not preclude his client from putting forward such

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[1] FEBUARARY 27, 1995, page 3.

Mr. Walker: And, your Honor, we had -- I had sent you a letter to the effect that the matter would be withdrawn.

The Court: And it was not.

Mr. Walker: My client felt otherwise, and the matter was not withdrawn, and he came here without counsel.

a motion if the interest of justice requires. The rule relied upon by Judge Subers that a litigant who already has counsel cannot appear *pro se* is not an absolute one.

> Where a party is represented by competent counsel his case should be conducted by that counsel unless it becomes apparent that the interests of justice require the party's active participation pro se *(emphasis added). Overholser v. De Marcos*, 1945, 80 U.S. App D.C. 91, 149, F.2d 23, 26, *cert. denied*, 325 U.S. 889, 65 S Ct. 1579, 89 L.Ed. 2002.

> The Second Circuit's rule appears to be that it is within the discretion of the trial judge to determine whether the defendant may act as his own counsel in conjunction with representation by an attorney. *United States v. Private Brands*, 250 F. Supp 2d. 554, 557 (2nd Cir. 1957) cert. denied, 355 U. S. 957, 78 S Ct. 542, 2 L Ed. 2d 532 (1958). This also appears to be the rule in the other circuits which have addressed this issue. *United States v. Patricia Swinton*, 400 F. Supp. 805 (1975).

On February 21, 1995, in what was Petitioner's second attempt to have the recusal petition heard, Petitioner made it very clear to the Court that his efforts to find a lawyer to maintain his recusal were to no avail.

> Mr. Gutin: . . . He did not appear with counsel. He was directed to come with counsel.

> Paul Schapiro: . . . five counsel are aware of today's proceedings. The problem is each one gives me this threat of a certain amount of money, and you don't understand how much money has been spent.
>
> I haven't bought anything for myself, but to try to get back my properties and have my children back. [N. T. February 21, 1995, p 9]

Any reasonable person would perceive Judge Suber's actions and omissions as being biased against Petitioner, requiring his recusal from the case.

It is well settled in case law where there have been allegations going to the issue of impartiality, bias, or prejudice a reasonable person standard should be applied. In *Liljeberg v. Health Services Acquisition Corporation*, 486 U.S. 847, 860-61 (1987); 674 (lst Cir. 1984) cert. denied, 469 U.S. 1191 (1985), it is stated that "whether an appearance of impropriety exists is determined under an objective standard, **i.e., would a reasonable person, not the judge himself, question the impartiality of the court**." The decision goes on to say that "the objective standard is required in the interest of insuring justice in the individual case and maintaining public confidence in the integrity of the judicial process which depends on a belief in the impartiality of judicial decision making." Id. at 864.

II. The Montgomery County Court did not have jurisdiction to preside over Petitioner's case and issue orders after the Petitioner filed a notice of Appeal on March 14, 1995.

Petitioner contends that the trial court acted without jurisdiction in contravention of the Pennsylvania Rules of

Appellate Procedure, 1701(c) wherein the taking of an appeal divests the trial court of jurisdiction.

By acting without jurisdiction the trial court vitiated fundamental interests Petitioner sought to protect. Moreover, on the very day that the trial court acted (i.e. March 24, 1995), attorney for Petitioner informed the trial court that Petitioner was in the Hospital being treated for gall bladder stones and other associated maladies. (App. Vol. VII, R.R. 3929). Hospital records can be found at (App. Vol. VII, R.R. 3934a-R.R. 3934r).

Judge Subers had a solemn obligation based on Canon 3C(l)(a) of the Code of Judicial Conduct not to proceed further on the matter:

> A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings.

Petitioner's rights to procedural due process and to fundamental fairness within the forum all were injured as a consequence of granting bifurcation.

III. The decree of bifurcation served to vitiate the interests of Petitioner and contravene the avowed policy of the divorce code to promote justice and equity between the parties.

Bifurcation of a divorce action is permitted pursuant to statute which allows the Court to separate granting of a divorce from resolution of economic claims. 23 P.S. Sec. 401 (b).

In *Beamer v. Beamer*, 479 A.2d 485 (Pa. Super. 1984), the Court announced that under the new Code it possessed "broad equitable powers to protect the interest of the parties or to effectuate the purpose of this act. " id. at 488. It made clear that one of the purposes of the Code is to "[e]effectuate economic justice between parties who are divorced or separated and . . . insure a fair and just determination and settlement of their property rights." id. at 488. See also 23 P.S. Sec. 102(a)(6). Clearly, the letter and spirit of this mandate has abeen absent in the case at bar.

In *Fenstermaker v. Fenstermaker*, 502 A.2d 185 (Pa. Super. 1985), the Court reiterated the aforementioned policy and, in addition, held that the "trial court is required, pursuant to request by party to bifurcate, to carefully study case and evaluate advantages and disadvantages of bifurcation on a case-by-case basis, and trial judge must review facts of the case and not make a pro forma decision to bifurcate. "

Wolk v. Wolk, 318 Pa. Super. 311, 464 A.2d 1359 (1983), established the standards for evaluating petitions for bifurcation. In Wolk, a case in which a decision to bifurcate was reversed and remanded, the Superior Court determined that while it was the intent of the legislature to permit bifurcation, the decision to bifurcate should not be made pro forma, but must be based upon a determination of the advantages and

disadvantages in each case. Only when the benefits outweigh the disadvantages should bifurcation be granted.

Respondent's interests are clearly being promoted by a bifurcation. Why? Because all of the parties property is in her possession. She was given "without prejudice" the entire escrow from the sale of the parties' home. Although the Petitioner gave the trial court evidence of over $350,000.00 spent in legal fees alone defending against Respondent's fraudulent divorce action, the Respondent continues to insist that the Petitioner has not given an accounting of the monies taken out of pensions. Petitioner continues to be albatrossed with a $147,000.00 judgment for alleged arrearage owed even though Respondent has already received over $128,666.00 from the escrow account and from disability coerced out of Petitioner under circumstances of gross overreaching and duress in the July 25, 1994 "agreement".

In granting Respondent a bifurcated divorce, the Respondent will have no incentive to resolve the economic claims and Petitioner will continue in his harmed position indefinitely with the economic and perjury issues continued to be postponed as has been the case up until now.

One of the basis upon which the Respondent's bifurcation is predicated is upon the Petitioner's withdrawal of his exceptions to the Divorce Master's Report of June 10, 1994, per the July 25, 1994 "agreement". (App. Vol. Vll, R.R. 1319-1328.). However, as amply described in previous petitions that agreement was coerced out of the Petitioner under circumstances of gross overreaching and duress. Petitioner's

withdrawal of exceptions then was absolutely involuntary and such does not constitute a valid withdrawal of those exceptions. In fact, on December 30, 1994, even prior to Respondent's Petition for Bifurcation, the Petitioner filed a Petition with the trial court entitled *Petition to Keep Defendant's Exceptions to the Divorce Master's Repcrt Intact.* (App. Vol. VII, R. R. 3938-3941)

Petitioner is just as anxious to move on with his life as the Respondent claims she is anxious to move on with her life. However, the trial court's decree of bifurcation would allow no resolution of the outstanding economic claims. It would also offer no resolution of Respondent's perjury and fraud and the economic consequences to the Petitioner would be tantamount to continuing the Petitioner's persecuted and oppressed state, while allowing the Respondent to go scot free after all the damage and havoc she has wrought.

Again, to reiterate, the Divorce Code seeks to promote "economic justice" between the parties which clearly is absent in the instant case. Moreover, the issue of extrinsic fraud which is clearly implicated in the entire matter, argues in favor of overturning the decree of bifurcation.

IV. The Civil Rights Act of 1871, as amended 42 U.S.C. Sec. 1983 provides a remedy to Petitioner for due process violations occurring within domestic proceedings.

The domestic relations exception to federal jurisdiction and the abstention doctrines are irrelevant here.

> The "unflagging obligation" of the federal courts to exercise their jurisdiction" is particularly weighty when those seeking a hearing in federal court are asserting . . . their right to relief under 42 U.S.C. Sec. 1983. *Signad, Inc. v. City of Sugar Land,* 753 F.2d 1338, 1340 (5th Cir.), *cert denied,*_____ U.S._____ , 106 S.Ct. 75, 88 L Ed. 2d 61 (1985) (quoting *Tovar v. Willmeyer*, 609 F.2d 1291, 1293 (9th Cir. 1979), *cert denied*, 469 U.S. 872, 105 S.Ct. 223, 83 L.Ed. 2d 152.

Nor does the Eleventh Amendment or judicial immunity doctrines shield these defendants from the scrutiny and remedial purposes of the 42 U. S.C. 1983 et seq. civil rights statutes as the defendants would like this Court to believe. In *Drollinger v. Milligan*, 552 F.2d 1220 (1977) the circuit court stated:

> We also disagree with the district court's finding that the defendants are not "persons" within the meaning of Sec. 1983. State officers acting under color of state authority are properly "persons" who may be defendants in a civil rights suit. *Monroe v. Pape* 365 U.S. 167, at 172, 81 S.Ct. 473, 5 L.Ed.2d 492. Our court has held in numerous cases that judges, as well as officers of the court, are not immune from Sec. 1983 suits seeking equitable relief, and therefore, has found that complaints charging them as defendants sufficiently state a cause of action. *Jacobson v. Schaefer*, 441 F 2d 127, 129 (7th Cir.1971); *Littleton v. Bergling*, 468 F.2d 389, 408 (7th Cir. 1972), reversed on other grounds sub nom, *O'Shea v. Littleton*, 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974). *Cf. Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed. 2d 288 (1967).
>
> Under the landmark decision in *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), a federal

> court, consistent with the Eleventh Amendment, may enjoin state officials to conform their future conduct to the requirements of federal law, even though such an injunction may have an ancillary effect on the state treasury.

Quern v. Jordan, 99 S.Ct. 1139, 1143 (1979) (citations omitted)

> . . . in *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L. Ed. 714, the Court held that, although prohibited from giving orders directly to a state, federal courts could enjoin state officials in their official capacities. And in *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662, the Court held that the Amendments grants the States an immunity from retroactive relief, it reaffirmed the principle that state officers are not immune from prospective injunctive relief.

Quern v. Jordan, supra.

It is axiomatic that the 42 U.S.C. Sec. 1983 statutes are directed at the state and its officers and those in cahoots with them when their customs, policies or actions result in the deprivations of an injury to federal rights. Those actions do not even have to be intentional and deliberate to bring them within the ambit of the civil rights statutes. Petitioner has properly invoked the federal forum to address these federal issues.

> The very purpose of 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights--to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative, or judicial.".
> *Mitchum v. Foster*, 407 U S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972) (quoting *Ex Parte Virginia*, 100 U.S. 339, 346, 25 L.Ed. 676

> (1979). It is clear from the legislative debates surrounding passage of 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment against State action . . . whether that action be executive, legislative, or judicial.

Ex Parte Virginia, 100 U.S. 339, 346, 25 L.Ed. 676.

> Of course, for a claim under Section 1983, a conspiracy as such is not an indispensable element as it is under Section 1985.

Manxell v. Saunders, 372 F.2d 573, 576 (5th Cir. 1967):

> We hold that the appellants stated causes of action under 42 USCA Section 1983. The statute embraces deprivation or both due process of law and equal protection of the laws, and the action charged was under color of state law . . .**through unconstitutional application of a law by conspiracy or otherwise.**

Mizell v. North Broward Hospital District, 427 F.2d 468, 472 (5Th Cir. 1970).

> . . . As Representative Lowe stated, the "records of the [state] tribunals are searched in vain for evidence of effective redress [of federally secured rights].... Hence this bill throws open the doors of the United States courts to those whose rights under the Constitution are denied or impaired.

Mitchum v. Foster, 92 S.Ct. 2151, 2161 (1972) citing Cong. Globe, 42nd Cong., 1st Sess., 374-376 (1871).

> Proponents of the legislation noted that state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights.

Mitchum v. Foster, supra, 92 S.Ct. at 2161.

> . . . Representative Perry concluded: Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; . . . Among the most dangerous things an injured party can do is to appeal to justice. Id, at 653.

Mitchum v. Foster, supra, 92 S.Ct. at 2161.

> A state official in his or her official capacity, when sued for injunctive relief, would be a person under Section 1983 because "official capacity" actions for prospective relief are not treated as actions against the State.

Hafer v. Memo, 116 L Ed. 2d 301, 311 (citations omitted).

The Civil Rights Act of 1871 as amended 42 U.S.C. Sec. 1983 does not exclude remedies for due process violations occurring within domestic relations proceedings. The Civil Rights Act of 1871 as amended 42 U. S. C. Sec. 1983 embraces actions for damages for deprivations of constitutional rights occurring within domestic relations proceedings. The domestic relations exception is inapplicable because Petitioner is not asking the Court to decide or change the status of a divorce, custody, or support decree. Instead, he seeks a determination as to whether the policies, customs and actions on the part of state entities and state personnel proximately caused the injuries to his federal rights. Further, he invokes the civil rights statutes to enjoin these defendants to conform their future conduct within constitutional standards.

Without getting "enmeshed" in any "domestic relations issues", Petitioner can easily demonstrate that a bad faith legal action was maintained against him with no intention of a valid conviction but one falsely maintained as a vehicle for unjust

enrichment, and that this was made possible because of the judicial defendants' deliberate indifference and callous disregard of his federally protected rights.

The Court need not "enmesh" itself with divorce and custody issues to adjudicate his federal claims. What it needs to determine is whether the judicial defendants and judicial policing agencies knowingly or unknowingly acquiesced in customs, policies and actions which resulted in deprivations of and injury to constitutional rights. Section 1983 makes clear that a Plaintiff does not have to exhaust his state remedies in order to bring his action in the federal forum. Nor must a Plaintiff bring his constitutional claims through the state system even if there is a state remedy. Plaintiff is free to choose either the federal forum or the state forum to litigate federal claims. It would be preposterous to ask a litigant to wait until the end of the state "litigation" before filing a civil rights action when it is that litigation that is proceeding corruptly or is, under color of state law, otherwise causing injury to federal rights.

> The availability to plaintiff of relief under state law does not by itself justify abstention by a federal even if abstention in such a case would avoid the need to adjudicate a constitutional question. It has been established since *Home Telephone & Telegraph C. v. City of Los Angeles*, 227 US 278, 33 S.Ct. 312, 57 L Ed. 510(1913), that federal courts have the power to enjoin unconstitutional state action even if such action is illegal under state law and hence remedial in state courts . . . And it has been established at least since *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L. Ed 2d 492 (1961), that 42 U.S.C. Sec. 1983 provides a remedy to those injured by unconstitutional

state action even "if the State has a law which if enforced would give remedy. **The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked**". 365 U.S. at 183 F. 2d 101, 112.

Schall v. Joyce, 885 F. 2d 101, 112.

CONCLUSION

For these various reasons, this petition for certiorari should be granted. The record is replete with due process violations of Petitioner's rights which are so egregious as to compel remedial relief. Petitioner urges this Honorable Court to take cognizance of his claims so unremittingly pursued in lower tribunals and grant the petition.

Respectfully submitted,

8/03/96

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APENDIX

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Appendix Within the Petition For Writ of Certiorari

ORDERS AND OPINIONS (STATE) DEALING WITH RECUSAL/BIFURCATION

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Appendix A (Federal)

Most recent two orders with Memorandum from U.S. District Court for the Eastern District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit.

Transcript of May 23, 1996 "Sanction" hearing in front of Judge James M. Kelly in U.S. District Court for the Eastern District of Pennsylvania.

Appendix C (State)

Most recent denied Orders of the Supreme Court of Pennsylvania dealing with the Recusal/Bifurcation

The Concise Statement of the Case.

Not Formatted:

Plaintiff's Lodged Appendix ***(Available upon request)***

Volume VII (State)
Denied State Orders and Opinions, RR 3816-RR 3843
Recusal/Bifurcation Matters RR 3844-RR 4022

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

PAUL J. SCHAPIRO	:	**No. 848 E.D. Allocatur**
	:	**Docket, 1995**
	:	
Petitioner	:	**Petitioner for Allowance of**
	:	**Appeal from the Superior**
v.	:	**Court.**
	:	
SARITA R. SCHAPIRO	:	
	:	
Respondent	:	
	:	
	:	
	:	
	:	

ORDER

PER CURIAM:

AND NOW, this 8th day of May, 1996, the Petition for Allowance of Appeal is denied.

Madame Justice Sandra Schultz Newman did not participate in the consideration or decision of this case.

TRUE COPY FROM THE RECORD
ATTEST: May 8, 1996

PATRICIA JOHNSON
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

IN THE SUPREME COURT OF PENNSYLVANIA

PAUL J. SCHAPIRO,	:	**No. 756 Eastern District**
	:	**Allocatur Docket 1995**
Petitioner	:	
	:	
v.	:	**Petition for Allowance of**
	:	**Appeal from the Superior**
SARITA SCHAPIRO,	:	**Court**
	:	
Respondent	:	
	:	
	:	
	:	
	:	

ORDER

PER CURIAM

AND NOW, this 9th day of May, 1996, the Petition for Allowance of Appeal is denied.

Madame Justice Sandra Schultz Newman did not participate in the consideration or decision of this case.

TRUE COPY FROM THE RECORD
Attest: 5/9/96

_____

John W. Person, Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania
Eastern District

Astor Weiss Kaplan & Rosenblum
Attorneys at Law
The Bellevue
Broad Street at Walnut, 6th Floor
Philadelphia, PA 19102

October 3, 1995

Charles W. Johns, Esquire
Prothonotary
Supreme Court of Pennsylvania
Room 468, City Hall
Philadelphia, PA 19107

Re: Paul J. Schapiro v. Sarita Schapiro
No. 0756 E.D. Allocatur Docket 1995

Dear Mr. Johns:

I just received notification of the filing of the above-captioned Petition for Allowance of Appeal. I will not be filing a Brief in opposition to the Petition for Allowance of Appeal. I request that the Order of the Superior Court be affirmed and that the Petition be denied for the reasons set forth in our Motion to Quash the Appeal.

I also point out that the Appellant has included many extraneous matters in his Petition for Allowance of Appeal, which should be disregarded by the Court.

Respectfully

DAVID GUTIN
Attorney for Sarita Schapiro

DG:po

cc: George E. Walker, Esquire
Dr. Paul J. Schapiro
Dr. Sarita Schapiro

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

SARITA SCHAPIRO,	:	**No. 120 Eastern District**
	:	**Miscellaneous Docket**
Plaintiff/Respondent	:	**1996**
	:	
v.	:	
	:	
PAUL SCHAPIRO,	:	
	:	
Defendant/Plaintiff	:	

ORDER

PER CURIAM:

AND NOW, this 27th day of June 1996, the application for extraordinary relief pursuant to Rule 3309 for extreme urgent emergency supersedes stay is **DENIED**.

Madame Justice Newman did not participate in this matter.

TRUE COPY FROM RECORD
Attest: June 27, 1996

_____

John W. Person, Esq.
Deputy Prothonotary
Supreme Court of Pennsylvania
Eastern District

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

SARITA SCHAPIRO	:	**No. 99 E.D. Misc. Dkt.1995**
	:	**(No. 967**
v.	:	**Philadelphia 1995)**
	:	**(No. 1179**
PAUL J. SCHAPIRO,	:	**Philadelphia 1995)**
Petitioner	:	

ORDER

PER CURIAM:

AND NOW, this 13th day of October, 1995, the Motion for Reargument and Motion for Clarification and Specific Findings are denied.

Mr. Justice Montemuro is sitting by designation.

TRUE COPY FROM RECORD
Attest: October 13, 1995

PATRICIA JOHNSON
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

SARITA SCHAPIRO	**: No. 99 E.D. Misc. Dkt.1995**
	:
v.	:
	:
PAUL J. SCHAPIRO,	:
Petitioner	:

ORDER

PER CURIAM:

AND NOW, this 27th day of July, 1995, the Petition for Extraordinary Relief is denied.

Mr. Justice Montemuro is sitting by designation.

TRUE COPY FROM RECORD
Attest: July 27, 1995

PATRICIA JOHNSON
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

SARITA SCHAPIRO	**: No. 54 E.D. Misc., Dkt.1995**
	:
v.	:
	:
PAUL J. SCHAPIRO,	:
Petitioner	:

ORDER

PER CURIAM:

AND NOW, this 31st day of March, 1995, the Application for Extraordinary Relief is denied.

Mr. Justice Montemuro is sitting by designation.

TRUE COPY FROM RECORD
Attest: April 3, 1995

PATRICIA JOHNSON
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

The Superior Court of Pennsylvania
Office of the Prothonotary
630 Walnut Street
3rd Floor , Suite 315
Philadelphia, Pennsylvania 19106

September 25, 1995

George E. Walker, Esq.
234-236 S. Eighth Street
Courtyard Entrance
Phila., Pa. 19107

Re: Sarita Schapiro v. Paul J. Schapiro, Appellant
No. 1179 Philadelphia 1995

Dear Mr. Walker:

This is to advise that the following Order has been entered in the above-captioned matter:

"AND NOW, September 25, 1995. Motion for Reconsideration is DENIED .

s/ Per Curiam"

Very truly yours,

_David A. Szewczak
Prothonotary

DAS: sd
cc: David Gutin, Esq.
cc: Honorable Albert Subers

SARITA SCHAPIRO	:	**IN THE SUPERIOR**
	:	**COURT**
	:	**PENNSYLVANIA**
v.	:	
	:	
PAUL J. SCHAPIRO,	:	
Appellant	:	**No. 01179 Philadelphia 1995**
	:	**(C.P. Montgomery County**
	:	**No. 91 - 18417)**

ORDER

The court hereby grants the motion to quash this appeal.

PER CURIAM

DATE: August 9, 1995

The Superior Court of Pennsylvania
Office of the Prothonotary
530 Walnut Street
3rd Floor , Suite 315
Philadelphia, Pennsylvania 19106

August 16, 1995

George E. Walker, Esq.
234 - 236 S. Eighth Street
Courtyard Entrance
Phila., Pa. 19107

Re: SARITA SCHAPIRO V.
PAUL J. SCHAPIRO, Appellant
No. 967 Philadelphia 1995

Dear Mr. Walker:

This is to advise that the following Order has been entered in the above-captioned matter:

"AND NOW, August 16, 1995, Appellant's Motion for Reconsideration is DENIED .

Per Curiam"

Very truly yours,

David A. Szewczak
Prothonotary

DAS: cg
cc: David Gutin, Esquire

SARITA SCHAPIRO	**: IN THE SUPERIOR**
	: COURT
	: PENNSYLVANIA
v.	**:**
	:
PAUL J. SCHAPIRO,	**:**
Appellant	**: No. 00967 Philadelphia 1995**
	: (C.P. Montgomery County
	: No. 91 - 18417)

ORDER

The court hereby grants the motion to quash this appeal.

PER CURIAM

DATE: July 31, 1995

SARITA SCHAPIRO	:	**IN THE SUPERIOR**
	:	**COURT**
	:	**PENNSYLVANIA**
v.	:	
	:	
PAUL J. SCHAPIRO,	:	
Appellant	:	**No. 967 & 1179 Philadelphia 1995**
		(C.P. Montgomery County No. 91 - 18417)

FILED:
August 16,1995

ORDER

The motion for consolidation is **DENIED**. The motion for stay is **DENIED**.

PER CURIAM

SARITA SCHAPIRO	:	**IN THE SUPERIOR COURT**
	:	**PENNSYLVANIA**
v.	:	
	:	
PAUL J. SCHAPIRO,	:	
Appellant	:	**No. 00967 Philadelphia 1995**

ORDER

AND NOW, this 23rd day of March, 1995, upon consideration of Appellant's Emergency Disposition for Supersedeas Stay of All Proceedings, **IT IS HEREBY** ordered that the petition is **DENIED**.

PER CURIAM

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA FAMILY DIVISION

SARITA SCHAPIRO	:	**NO. 91-18417**
VS.	:	
PAUL SCHAPIRO	:	

ORDER RE ORAL ARGUMENT DEFENDANT'S PETITION FOR RECUSAL OR THE HONORABLE ALBERT R. SUBERS

AND NOW, this 10th day of January, 1995, Oral Argument on Defendants Petition for Recusal of The Honorable Albert R. Subers in the above matter is scheduled for Friday, January 27, 1995, at 9:00 a.m. in Court Room "F", Montgomery County Court House, Norristown, Pennsylvania.

BY THE COURT:

ALBERT R. SUBER, J

Copies mailed to the
following on 1/10/95:

David Gutin, Esquire
George E Walker, Esquire
Paul Schapiro, pro se
Court Administration - Argument Section

_____
Secretary

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA CIVIL ACTION - LAW

SARITA SCHAPIRO	:	**NO. 91-18417**
VS.	:	
PAUL SCHAPIRO	:	

AND NOW, January 27, 1995 Defendant's Petition for recusal of the Honorable Albert R. Subers is hereby continued.

Counsel for defendant did not appear (George Walker, Esq.)

BY THE COURT:

ALBERT R. SUBERS

Plaintiff Atty. David Gutin
Defense - Pro Se
Reporter Pamela Moran
Clerk E. Van Bushack

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA FAMILY DIVISION

SARITA SCHAPIRO : NO. 91-18417

VS. :

PAUL SCHAPIRO :

AMENDED ORDER RE ORAL ARGUMENT ON DEFENDANT'S PETITION FOR RECUSAL OF THE HONORABLE ALBERT R. SUBERS

AND NOW, this 30th day of January, 1995, Oral Argument on Defendants Petition for Recusal of The Honorable Albert R. Subers in the above matter is scheduled for Tuesday, February 21st, 1995, at 9:30 a.m. in Court Room "F", Montgomery County Court House, Norristown, Pennsylvania.

BY THE COURT:

ALBERT R. SUBERS, J

Copy of the above Order sent to:

David Gutin, Esquire
George E Walker, Esquire
Paul Schapiro
by:

Secretary
CC: Court Administration - Argument Section

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA CIVIL ACTION - LAW

SARITA SCHAPIRO	:	**NO. 91-18417**
VS.	:	
PAUL SCHAPIRO	:	**Oral Argument**

AND NOW, February 21, 1995 Defendant's Petition for recusal of the Honorable Albert R. Subers is hereby **Dismissed** by the Court.

BY THE COURT:

ALBERT R. SUBERS

Plaintiff Atty. David Gutin
Defense - Pro Se
Reporter Patricia Murphy
Clerk E. Van Bushack

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA CIVIL ACTION - LAW

SARITA SCHAPIRO : **NO: 91 -1 8417**

VS. :

PAUL SCHAPIRO :

ORDER

AND NOW, this 9th day of March, 1995, It is hereby ORDERED and DECREED that Defendant's Petition to Appeal Judge Suber's Dismissal of his Own Recusal Hearing filed pro se, which has not been filed with any Appellate Court shall be considered as a Motion for Reconsideration of the Order of this Court of February 21st, 1995, which dismissed the Motion for Recusal for failure of Counsel to appear and prosecute said Motion. The Motion for Reconsideration is DENIED.

BY THE COURT:

_____

ALBERT R. SUBERS, J.

Copy of the above Order sent to:
David Gutin, Esquire
George E. Walker, Esquire
Dr. Paul Schapiro by:

_____

Secretary

IN THE COURT OF COMMON PLEAS
OF MONTGOMERY COUNTY, PENNSYLVANIA

SARITA SCHAPIRO :
Plaintiff,

vs. :

91-18417

PAUL J. SCHAPIRO, :
Defendant

NOTICE OF APPEAL

Notice is hereby given that Dr. Paul J. Schapiro above named hereby appeals to the Superior Court of Pennsylvania from the Order entered in this matter on March 9, 1995 by Judge Albert Subers in the Montgomery County Court, denying Dr. Paul J. Schapiro's Petition to Appeal Judge Suber's Dismissal of his Own Recusal Hearing filed February 27, 1995.

Respectfully Submitted,

_____

Paul J. Schapiro, D.P.M.

ASTOR WEISS KAPLAN & ROSENBLUM
BY: DAVID GUTIN, ESQUIRE
IDENTIFICATION NO. 15825
3 BALA PLAZA WEST SUITE 100
P. O. BOX .1665 **ATTORNEY FOR PLAINTIFF**
BALA CYNWYD, PA 19004
(610) 667-8660

SARITA R. SCHAPIRO **COURT OF COMMON PLEAS**
MONTGOMERY COUNTY
vs. **CIVIL ACTION**

PAUL J. SCHAPIRO **NO. 91-18417**

IN DIVORCE

ORDER

AND NOW, this 24th day of March, 1995, upon consideration of Plaintiff's Petition for Bifurcation, it is hereby **ORDERED** and **DECREED** that SARITA R. SCHAPIRO, Plaintiff, and PAUL J. SCHAPIRO, Defendant, are divorced from the bonds of matrimony.

The Court retains jurisdiction of any pending economic claims raised by either party.

BY THE COURT:

_____
SUBERS. ALBERT R., JUDGE

cc: David Gutin, Esquire
George E. Walker, Esquire

IN THE COURT OF COMMON PLEAS
OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

SARITA SCHAPIRO	:	**NO. 91-18417**
v.	:	
PAUL JAY SCHAPIRO	:	

OPINION

SUBERS, J. **MAY 16, 1995**

Before the Court is Defendant's appeal from this Court's Order dated March 9, 1995, which denied his Petition for Reconsideration. Pursuant to Court Order dated March 20, 1995, defendant filed a Concise Statement of Matters Complained of on Appeal on April 3, 1995, which addressed numerous issues beyond the specific issue addressed in this Court's March 9, 1995 Order. The issues complained of beyond the specific issue before the Court will not be addressed.

Plaintiff initiated divorce proceedings by filing a complaint on September 25, 1991. Defendant complains of bias and injustice in the Montgomery County Court system as the sole reason that this divorce and ancillary issues have dragged on for nearly four (4) years. Even a cursory review of the record reveals the true source of delay.

For the first two years of litigation, defendant evaded a bench warrant issued due to his failure/refusal to pay child support payments to the plaintiff on behalf of their two children, Jillian, born August 5, 1980, and Lauren born September 16, 1985. Defendant was ultimately apprehended after suffering serious injuries in a one vehicle accident. This Court became specifically involved with this case when defendant appeared as a result of his apprehension. Since that time hearings have been scheduled, to address different issues, no less than six (6) times. Defendant has repeatedly thwarted nearly every attempt to reach the merits of each petition.

Defendant filed the Petition for Recusal on December 20, 1994, and a second copy of the identical petition was filed on December 23, 1994. This Court issued an Order on January 10, 1995 setting Oral Argument for January 27, 1995. Defendant, despite nine (9) attorneys of record, appeared at the hearing without counsel) causing this Court to continue the argument to February 21, 1995, to enable any one of defendant's counsel to appear on his behalf. Again, on February 21, 1995, defendant appeared without counsel, and informed

the court that if four of his demands were met, he would drop the Recusal.[1] Prior to the hearing of February 21, 1995, defendant's most recent attorney of record, George Walker, Esquire informed the Court by letter that

he would be withdrawing the petition for Recusal, in order to move forward on the other issues. Since Mr. Walker failed to appear at the hearing, defendant on his own, insisted the Petition to Recuse stand. Following a Motion to Dismiss by the Plaintiff, the Court proceeded to dismiss the Petition on the basis that Defendant twice appeared without counsel which prevented the Court from proceeding on the merits of his petition. Also in consideration were two upcoming hearing dates on February 27, 1995 and March 3, 1995 in which fifteen (15) outstanding petitions on the issues of custody, alimony, child support and bifurcation were supposed to be addressed. To continue the Petition to Recuse argument to a third hearing date would allow the defendant to frustrate the system yet again, and continue on his crusade to avoid and thus prevent any Court proceeding which he anticipates may not grant his motion or may rule in favor of the plaintiff.

Defendant, at the time of his Petition to Recuse, had no

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[1] See Notes of Testimony, 2/231/95 at page 2.

basis to evaluate any possible bias of this Court, because up until this time, he had successfully prevented this Court from ruling on the merits of any of the over fifteen (15) outstanding petitions. Furthermore, minutes prior to the February 27, 1995 hearing, defendant filed a "Petition to Appeal Judge Subers Dismissal of Recusal Hearing" with the Montgomery County Prothonotary, which at the time, this Court believed to be an appeal to Superior Court, which would then remove jurisdiction, and consequently, the hearing on the petitions set for February 27, 1995 were continued. Later examination of the petition and docket entries revealed that defendant had not filed an appeal with the Superior Court, but had filed this "appeal" at the trial court level. Despite nine (9) attorney's of record, defendant filed this petition pro se, thus presenting to the court an ambiguous document which did not follow any rules of procedure. As a result, this Court decided to treat the "appeal" at the trial level as a Motion for Reconsideration, which this Court denied in the Order dated March 9, 1995. This is the Order from which defendant has appealed, the denial of his "appeal" which was treated as a Motion for Reconsideration. Defendant failed to properly appeal the dismissal of his Petition to Recuse, which was entered on February 21, 1995.

This case is a frightening example of a defendant who attempts to proceed pro se, and ignore the advice of his numerous attorneys. He repeatedly files redundant, excessive, ambiguous, procedurally incorrect, frivolous petitions which interfere with the Court's ability to reach the truly valid issues before the Court. There are several extremely important issues in this case, such as child support and custody, which need to be addressed in a timely manner. Defendant's conduct, in the form of this Petition to Recuse, is just another example of his conduct preventing the Court or the Plaintiff from proceeding with and resolving these critical issues. This defendant may very well have valid arguments with regards to custody, alimony and child support, but it is his own actions which refute all attempts by the Plaintiff and the courts to proceed on each issue.

CONCLUSION

For the foregoing reasons, this Court's Order dated March 9, 1995 should be **AFFIRMED**..

BY THE COURT

Albert R. Subers, J.

Copies of the foregoing opinion sent to:
David Gutin, Esquire.
George Walker, Esquire
Paul J. Schapiro, Defendant
by

_____
Secretary

IN THE COURT OF COMMON PLEAS
OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

SARITA SCHAPIRO : **NO. 91 - 18417**

v. :

PAUL JAY SCHAPIRO :

OPINION

SUBERS, J. **MAY 16, 1995**

Before the Court is an appeal from this Court's Order dated March 24, 1995, which granted a bifurcated divorce in favor of the plaintiff.. No Concise Statement of Matters Complained of on Appeal has ever been filed by the defendant addressing the appeal of this Court's March 24, 1995 Order, docketed at No. 1 179 PHL 1995, (Pa.Super.).

Defendant filed a prior appeal on a separate issue, from this Court's Order dated March 9, 1995, which denied a Petition for Reconsideration by the defendant. Pursuant to Court Order dated March 20, 1995, defendant did file a Concise Statement of Matters Complained of on Appeal on April 3, 1995, which addressed numerous issues beyond the specific issue addressed in this Court's March 9, 1995 Order. A separate Opinion has been filed addressing those issues, under Pennsylvania Superior Court docket number 967 PHL 1995.

The purpose of Pennsylvania Rule of Appellate Procedure 1925(b), Statement of Matters Complained Of, is to specify the particular issues which the defendant intends to present on appeal in order to permit the trial court the opportunity to provide the appellate court with a focused and meaningful explanation for challenged actions. Commonwealth v. Osteen, 381 Pa. Super. 120, 552 A.2d 1124 (1989).

The lower court forthwith may enter an order directing the appellant to file of record in the lower court and serve on the trial judge a concise statement of the matters complained of on the appeal no later than 14 days after entry of such order. A failure to comply with such direction may be considered by the appellate court as a waiver of all objections to the order, ruling or other matter complained of. Pa.R.A.P. 1925(b).

Unless the Statement of Matters Complained Of On Appeal is filed with the lower court in the appointed time period, it is impossible for this Court to address the allegations of error on appeal. As far as this Court is aware, the only error alleged by the defendant is that this Court ruled against him.

In the event the Superior Court decides to reach the merits of this appeal, bifurcation is an available remedy pursuant to 23 Pa.C.S.A. §3323(c) which states:

> In the event that the court is unable ***for any reason*** to determine and dispose of the matters provided for in subsection (b) within 30 days after the report of the master has been filed, it may enter
> a decree of divorce or annulment. 23 Pa.C.S.A. §3323(c)***(emphasis added).***

The Master's report in this case was filed on June 10, 1994 in which the Master recommended, after an extensive series of hearings, that a decree in divorce be granted on the grounds of irretrievable breakdown.

Defendant's excessive misuse of the judicial system to periodically delay or avoid hearings by filing a surfeit of frivolous motions, appearing without counsel despite nine (9) attorneys of record, and failing to appear in court altogether, causing a bench warrant to be issued, makes this the exact type of case where bifurcation is most needed. Defendant, Paul J. Schapiro, has attempted to paralyze the Montgomery County Courts in his quest to prevent a divorce by his wife. Bifurcation was the only option available to the Court and to the Plaintiff, Sarita Schapiro, who expressed a specific desire to remarry and to allow these parties to begin restructuring their lives after nearly four (4) years of bitter litigation. See Wolf v. Wolf; 318 Pa.Super. 311, 464 A.2d 1359 (1983).

CONCLUSION

For the foregoing reasons, the appeal should be quashed or in the alternative this Court's Order dated March 24, 1995 should be **AFFIRMED..**

BY THE COURT

_____

Albert R. Subers, J.

Copies of the foregoing opinion sent to:
David Gutin, Esquire
George Walker, Esquire
Paul J. Schapiro, Defendant
by

_____

Secretary

IN THE MONTGOMERY COUNTY COURT OF COMMON PLEAS

PAUL J. SCHAPIRO
Defendant

v. **91-18417**

SARITA SCHAPIRO
Plaintiff

CONCISE STATEMENT OF MATTERS COMPLAINED OF ON APPEAL TO THE SUPERIOR COURT OF PENNSYLVANIA

1. Does Judge Subers have the right to ignore PA Rules of Appellate Procedures Rule 1701 regarding subject matter jurisdiction where the Appellant has filed an appeal of the dismissal of his recusal to the Superior Court of Pennsylvania (967 PHL 95), thereby divesting the Montgomery County Court of all jurisdiction?

2. Has the Appellant's Application for Extraordinary Relief pursuant to Rule 3309 for Emergency Supersedeas Stay of All Proceedings in the Montgomery County Court Pending Review by the Supreme Court of Pennsylvania of the Bias and Conflicts of interest Bearing on their Integrity divested the Montgomery County Court of jurisdiction (No. 54 ED. Misc. Docket 1995), the application of which Judge Subers received and was aware,

mandating the vacating of all subsequent orders issued by Judge Subers?

3. Can Judge Subers deny appellant his due process rights to proceed on his motion for recusal on the basis of his attorney's absence when in fact his attorney, George E. Walker, Esquire, was present on February 27, 1995, and the motion for recusal could have been heard on that date?

4. Did Judge Subers have jurisdiction to preside over the Appellant's case and issue orders after the Appellant filed a notice of appeal on March 14, 1995, when Judge Subers himself on February 27, 1995 repeatedly stated that he no longer had jurisdiction to hear any issues of the case and when counsel for the other side, David Gutin agreed that "(Judge Subers's hands were tied until the appeal was either withdrawn or disposed of by the appellate court"?

5. Does Judge Subers' conduct in ignoring evidence of diminished capacity and duress in coercing the terms of the July 25, 1994 agreement, when he was subsequently on November 29, 1994 presented with an injunction apprising him of the circumstances under which he was induced to agree to the terms of that agreement, demonstrate incurable ill will against the Appellant, especially in light of the fact that Judge Subers

knew that the Appellant was recovering from near fatal injuries and had almost died since his serious car accident only two months earlier on May 10, 1994?

6. Has Judge Subers shown incurable bias and ill will towards the Defendant when he has been made aware that the Appellant's daughter, Jillian Schapiro, is being subjected to extreme and unjustified acts of physical and mental abuse in psychiatric hospitals, schools for problematic children, orchestrated by her mother, the Plaintiff, Sarita Schapiro, where Judge Subers has received letters from Jillian Schapiro demonstrating that she is being punished by her mother solely because she wants to live with her father, but Judge Subers has instead purposefully acted to prevent her testimony in court or to appoint the child a guardian ad litem to defend her?

7. Has the Appellant's fundamental right to present his side of the controversy in front of an unbiased tribunal been defeated by the bias and flagrant conflicts of interests of the Montgomery County Court Judges, in particular Judge Subers, with the law firm of Astor, Weiss, Kaplan and Rosenblum, entitling Appellant to the vacating and opening of all orders on the basis of extrinsic fraud, as well as on the basis of usurpation of jurisdiction?

8. Has Judge Albert Subers denied Appellant his rights to be heard in a fair and impartial manner when the record demonstrates gross and incurable bias, prejudice and ill will toward the appellant, mandating his recusal?

9. Has the Appellant been deprived of a fair presentation of the controversy in front of an unbiased tribunal when the record demonstrates that the actions of the Montgomery County Court has been one of protecting their own interests and covering up their wrongdoing by the continuous suppression of evidence and witnesses favorable to the Appellant and probative of their close relationship with the Astor Weiss and Newman law firm, mandating a change of venue of the instant case?

10. Was the appellant precluded from presenting his side of the controversy in front of an unbiased tribunal where it can be established that the law firm of Astor Weiss and Newman has in numerous previous cases before Judge Subers consistently prevailed for its clients and has had an undue influence over Judge Subers?

11. Is the Montgomery County Court compelled to vacate orders that were issued after the time it had been divested of jurisdiction by the Appellant's appeal to the Superior Court?

12. Has the corrupt and biased conduct of the Montgomery Court judges, in particular, Judge Subers, destroyed any meaningful resolution of the controversy by encouraging the contemptuous, malicious and extortionist behavior of the Plaintiff, in plain disregard of the Pennsylvania Divorce Statutes and case law, mandating a change of venue of the instant case?

13. Should Judge Subers' order of March 24, 1995 granting the Plaintiff's Petition for Bifurcation of the parties divorce case, where Judge Subers was apprised that the Appellant's withdrawal of his Exceptions to the Master's report was coerced out of him on July 24, 1994 and where Appellant had filed Petitions to keep his Exceptions intact, and when jurisdiction had been divested of the Montgomery County Court, be vacated on the basis of usurpation of jurisdiction and extrinsic fraud?

14. Should Judge Subers' order of March 27, 1995 dismissing his Emergency Petition for Writ of Habeas Corpus to Bring Jillian Schapiro Before the Montgomery County Court and Motion to Appoint Guardian Ad Litem for Jillian Schapiro, allowing her to present her custodial preferences and testify about the untruthfulness of her mother's testimony in regards to herself as well as the appellant, be vacated on the basis of usurpation of jurisdiction and extrinsic fraud?

15. Did Judge Subers usurp his jurisdiction by issuing a bench warrant against the Appellant in the March 24, 1995 hearing when he was apprised that the Appellant was at Abington Hospital for acute pain in the gallbladder and stomach and where evidence presented that he had been treated for similar symptoms on January 4 and January 8 at the same Hospital, and where he refused to allow the hearing to be held on the following Monday, and where the Montgomery Court had been divested of jurisdiction by the Appellant's appeal to the Superior Court?

16. Has the Schapiro v. Schapiro case degenerated into a quagmire wherein the Judges, in the process of covering up for their own wrongdoing, conflicts of interests with the law firm of Astor, Weiss and Newman, suppression of evidence and witnesses, unconstitutional delays, and grossly blatant illegalities of procedure, rendered it impossible for the Appellant to have a fair submission of the controversy in front of an unbiased tribunal, mandating a change of venue into another county?

Respectfully submitted,

Paul J. Schapiro D.P.M.

PAUL J. SCHAPIRO, D.P.M
Benson Manor, Suite 623
101 Washington Lane
Jenkintown, PA 19046

Date: 4/4/95

VERIFICATION

The undersigned verifies that the within

CONCISE STATEMENT OF MATTERS COMPLAINED UPON ON APPEAL TO THE SUPERIOR COURT OF PENNSYLVANIA

is true and correct to the best of his information, knowledge and belief. This Verification is made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

4/4/95
Date

Paul J. Schapiro, D.P.M.
PAUL J. SCHAPIRO, D.P.M.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

August 8, 1996

George E. Walker
234-236 S. Eighth Street
Philadelphia, PA 19107

RE: Paul J. Schapiro v. Sarita R. Schapiro

Dear Mr. Walker:

The petition for a writ of certiorari mailed August 4, 1996, from Philadelphia was received August 7, 1996, and must be returned for the following reasons.

The type size of the petition does not comply with Rule 33.1(b). You have not included in the appendix to the petition the orders and/or opinions of the Superior Court of Pennsylvania that are mentioned in the caption of the cases before the Supreme Court of Pennsylvania. Nor are these items mentioned in the text of the petition. I do not find the $300.00 filing fee was submitted.

The corrected petitions must be received in this office within 60 days of the date of this letter. See Rule 14.5. The Rule 29 filing by mail Rule does not apply.

The purported lodgings are returned since the Court does not want to receive any record until the Court itself calls for the record. See Rule 12.7.

Sincerely,
William K. Suter, Clerk
By:

Francis J. Lorson
(202-479-3024

Enclosures

cc: Sarita Schapiro
Walter S. Jenkins
James O'Connell
Richard A. Fineman
Thomas Ciclone
David Gutin